

COPY

in 89  
concord in c 54

4-5

NEW HAMPSHIRE LAW LIBRARY

SEP 03 1998

CONCORD, N.H.

1952

Nov. 26

William H. Messeck, Jr.  
State Forester  
Concord, New Hampshire

Dear Bill:

You have inquired if a District Fire Chief in your department is subject to the provisions of The Hatch Act, which provides:

"No officer or employee of any state or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or any federal agency shall . . . take any part in political management or in political campaigns . . ."  
U.S.C.A., Title 5, s. 118k (a).

In this case, the District Fire Chief was urged to run for Republican nomination as Representative in the state Legislature. Accordingly, he paid his two dollar filing fee to the Secretary of State, his name was printed on the primary ballot and he received the nomination which he accepted, and his name therefore appeared on the biennial election ballot as the Republican candidate for that office. He did not make any speeches, advertise nor receive and expend any money, as indicated by his report of political receipts and expenditures. In short, he merely stood for election as a Republican candidate to the Legislature, and was in fact elected. His principal employment is his job as a District Chief. His salary is, at least partially, paid out of federal grants received by your department under the Clarke-McEary Act. U.S.C.A., Title 16, s. 565. It is not possible, nor necessary, to determine the exact portion derived from such funds.

While it is perhaps doubtful that the provisions of the Hatch Act would prohibit activity in a primary campaign for state office, there can be no doubt that such activity in an election

William H. Messeck, Jr. -- 2.

falls within the scope of the Act. If the District Fire Chief's election had been the result of "write-in" votes, his name not appearing on the ballot, he would not be subject to the law. 39 Op. Atty. Gen. 423. However, the late Mr. Justice Murphy while Attorney General noted that "Being a candidate for elective office -- Federal, state or local" was an act which constituted taking "an active part in political management or in political campaigns". Circular No. 3301, October 26, 1939. Senate Document No. 135, 76th Congress, 2nd Session. Although the practice of issuing informal interpretations of the Hatch Act has been discontinued by the Attorney General, the rulings previously made have not been revoked. 39 Op. Atty. Gen. 446 (1940).

It is my conclusion that the facts of this case bring it within the prohibited activity of the Hatch Act. It does not follow, however, that there is any requirement on the part of the State to effect the dismissal of such an employee. Neustein v. Mitchell, 52 F. Supp. 531 (D.C. N.Y. 1940). So far as the administration of your department is concerned, the case is not without significance and I suggest that you discuss this aspect of the case with Mr. Waters.

Very truly yours,

Gordon M. Tiffany  
Attorney General

GHT/a